S.B.Civil Revision Petition No.12/2007.

Jagdish Chand Nagda.

vs.

Girish Kumar and others.

Date : 23.2.2007

HON'BLE MR. PRAKASH TATIA, J.

Mr. Sandeep Shah, for the petitioner.

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Heard learned counsel for the petitioner.

The petitioner is aggrieved against the order dated 15.11.2006 by which the trial court has decided to frame an issue about the will alleged to have been executed by deceased Kunj Bihari Sharma and which was set up by petitioner himself.

Tt is submitted by learned counsel for the petitioner that the disputed amount has already been withdrawn, therefore, the exercise will be futile under Indian Succession Act because by these proceedings, the respondent cannot get the amount which has already been withdrawn.

The petitioner himself set up a Will to dislodge the case of the respondent and he cannot avoid the decision on his defence by taking such a plea.

So far as proceedings under Section 372 of the Indian Succession Act are concerned, by that, it is decided that who is successor and to what extent, he succeeded to the property of the deceased and these proceedings cannot be quashed because of the reason that there is a registered will in favour of the petitioner which yet to be proved.

In view of the above, this revision petition, having no force, is hereby dismissed.

(PRAKASH TATIA), J.

S.Phophaliya